

ESTTA Tracking number: **ESTTA67613**

Filing date: **02/22/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Energy Brands Inc.		
Entity	Corporation	Citizenship	New York
Address	17-20 Whitestone Expressway Whitestone, NY 11357 UNITED STATES		

Attorney information	David H. Bernstein, Esq. Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 UNITED STATES trademarks@debevoise.com, szparnass@debevoise.com Phone:212-909-6000
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Applicant Information

Application No	78587740	Publication date	01/31/2006
Opposition Filing Date	02/22/2006	Opposition Period Ends	03/02/2006
Applicant	Fuze Beverage LLC 191 Glenwood Road Englewood, NJ 07631 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: drinking water with fruit flavors; drinking water; energy drinks

Attachments	EnergyBrands_Fuze.pdf (36 pages)
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Signature	/David H. Bernstein/
Name	David H. Bernstein, Esq.
Date	02/22/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No. 78/587,740

Filed: March 15, 2005

Mark: FUZE VITAWATER

Published: January 31, 2006

-----	X	
ENERGY BRANDS INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	Opposition No. _____
FUZE BEVERAGE LLC,	:	
	:	
Applicant.	:	
-----	X	

Commissioner for Trademarks
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Dear Sirs:

Energy Brands Inc. d/b/a Glacéau ("Glacéau"), a New York corporation with its principal place of business at 17-20 Whitestone Expressway, Whitestone, New York 11357, believes that it will be damaged by the registration of the mark FUZE VITAWATER by Applicant Fuze Beverage LLC ("Applicant") and hereby opposes the same, by and through its attorneys Debevoise & Plimpton LLP, based upon the following grounds:

1. Glacéau manufactures and markets the VITAMINWATER brand of nutrient enhanced waters. Launched in 1999, VITAMINWATER is credited with creating the entire category of nutrient enhanced waters and remains today the recognized category leader.

2. Glacéau owns United States federal trademark registration number 2,974,987 for the VITAMINWATER mark for “vitamin enhanced flavored drinking water” in Class 32.

3. Glacéau has used the VITAMINWATER mark in interstate commerce since 1999, long prior to Applicant’s 2005 application for the FUZE VITAWATER mark. By virtue of its enormous success, the VITAMINWATER mark has become associated exclusively with Glacéau. Glacéau’s VITAMINWATER and other products also have received considerable attention in the media.

4. By the application herein opposed, Applicant seeks to register the mark FUZE VITAWATER for “drinking water with fruit flavors; drinking water; energy drinks” in Class 32. Applicant’s application is based on an intent to use (“ITU”) the FUZE VITAWATER mark; no allegation of use has yet been filed.

5. This is not the first time that Applicant has tried to register a trademark that is confusingly similar to Glacéau’s well-known VITAMINWATER mark. On September 5, 2001, Applicant filed an ITU trademark application for FUZE VITAWATER (Serial No. 78/082,721), which it eventually abandoned.

6. On July 28, 2004, Applicant filed a new ITU application, this time for the mark VITAWATER (Serial No. 78/458,318). Shortly thereafter, Glacéau sent

Applicant's counsel a letter in which it objected to this application and any potential use of the VITAWATER mark.

7. The concerns that prompted Glacéau to object to this application also troubled the Trademark Office Examiner, who issued an Office Action citing, *inter alia*, Glacéau's prior application for VITAMINWATER. *See* Exhibit A. The VITAWATER application has since been suspended (*see* Exhibit B) pending disposition of a third party's application to register VITAMINAQUA, which also has been refused registration based on Glacéau's VITAMINWATER registration. *See* Exhibit C.

8. Based on the foregoing, Glacéau will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Glacéau.

9. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of the mark FUZE VITAWATER falsely suggests a connection between Applicant and Glacéau, with consequent injury to Glacéau and to the public.

10. Registration also should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's FUZE VITAWATER mark so resembles Glacéau's VITAMINWATER mark cited above and used consistently by Glacéau in the United States as to be likely to cause confusion, or to cause mistake, or to deceive, with consequent injury to Glacéau and to the public.

WHEREFORE, Glacéau believes it will be damaged by the registration by Applicant of the FUZE VITAWATER mark for the services identified in Application Serial No. 78/587,740 and respectfully requests that the Opposition be sustained, registration of said mark be denied, and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Glacéau's counsel, Debevoise & Plimpton LLP, at the address stated below.

Dated: New York, New York
February 22, 2006

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

By: 

David H. Bernstein
S. Zev Parnass
919 Third Avenue
New York, New York 10022
(212) 909-6000
trademarks@debevoise.com

Attorneys for Opposer
Energy Brands Inc.

Exhibit A (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

EXHIBIT A

Exhibit A (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

To: Fuze Beverage, LLC (docketing@mwzb.com)
Subject: TRADEMARK APPLICATION NO. 78458318 - VITAWATER - FUZE
Sent: 3/11/05 9:04:02 AM
Sent As: ECOM112@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/458318

APPLICANT: Fuze Beverage, LLC

78458318

CORRESPONDENT ADDRESS:

JEFFREY R. COHEN
MILLEN WHITE ZELANO & BRANIGAN
2200 CLARENDON BLVD STE 1400
ARLINGTON VA 22201-3360

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: VITAWATER

CORRESPONDENT'S REFERENCE/DOCKET NO: FUZE

CORRESPONDENT EMAIL ADDRESS:

docketing@mwzb.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/458318

The assigned trademark examining attorney has reviewed the referenced application and has determined the following.

PRIOR PENDING APPLICATIONS

Information is enclosed concerning pending Application Serial Nos. 78424474, 76174462, 76445170 and 75734223. Although the Office records have been searched and no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), there may be a likelihood of confusion under Section 2(d) of the Act between applicant's mark and the marks in the above noted applications. The filing dates of the referenced applications precede applicant's filing date. If one or more of these earlier-filed applications registers, registration may be refused under Section 2(d). 37 C.F.R. §2.83. Therefore, upon entry of a response to the Office action, action on this case may be suspended pending final disposition of the earlier-filed applications.

If applicant believes that there is no potential conflict between this application and the earlier-filed applications, then applicant may present arguments relevant to the issue in a request to remove the application from suspension. The election to file or not to file such a request at this time in no way limits applicant's right to address this issue at a later point.

IDENTIFICATION OF GOODS

The term "beverages" in the identification of goods is unacceptable as indefinite. The identification also is too broad because it could include beverages in more than one international class. Applicant must amend the identification to specify the commercial name of the beverage goods. If there is no common commercial name for the product, the applicant must describe the product and its intended uses. TMEP §1402.01. For example, the identification may be amended in the following manner, if accurate:

"Beverages, namely, bottled drinking water," in Class 32.

Please note that, while the identification of goods may be amended to clarify or limit the goods, adding to the goods or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods based on an intent to use the mark in commerce under Trademark Act Section 1(b):

- (1) Applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and
- (2) Applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

NOTICE: FEE CHANGE

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

(1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS);
or

(2) \$375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Steven M. Perez/

Trademark Attorney

Law Office 112

(571) 272-5888

steven.perez@uspto.gov

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action issued via email you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Mar 9, 2005

75734223

TYPED DRAWING

Serial Number

75734223

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

VITAMINWATER

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Energy Brands, Inc. CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: VITAMIN
ENHANCED FLAVORED DRINKING WATER. First Use: 1999/03/12. First Use
In Commerce: 1999/03/12.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1999/06/23

Amended Register Date

2002/08/06

Examining Attorney

SLOAN, CYNTHIA

Attorney of Record

DAVID H BERNSTEIN

Print: Mar 9, 2005

76174462

DESIGN MARK

Serial Number

76174462

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

GLACEAU VITAMINWATER

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Energy Brands, Inc CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S:
Non-alcoholic, flavored drinking water. First Use: 1999/03/12. First
Use In Commerce: 1999/03/12.

Section 2f Statement

in part, as to VITAMIN WATER

Filing Date

2000/12/02

Examining Attorney

SLOAN, CYNTHIA

Attorney of Record

David H. Bernstein

Exhibit A (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

GLACEAU VITAMINWATER

Print: Mar 9, 2005

76445170

DESIGN MARK

Serial Number

76445170

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

GLACEAU VITAMINWATER

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Energy Brands Inc. CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S:
Non-alcoholic, flavored drinking water. First Use: 1999/03/12. First
Use In Commerce: 1999/03/12.

Prior Registration(s)

1876824;2265015;2566682;2658236

Description of Mark

The mark consists of a bottle label with a band across the top third of the label, and the name GLACEAU VITAMINWATER written vertically three times across the label. The word VITAMINWATER is written in lowercase letters and in alternating emphasized and regular font.

Section 2f Statement

in part, as to VITAMINWATER

Filing Date

2002/08/29

Examining Attorney

SLOAN, CYNTHIA

Attorney of Record

Print: Mar 9, 2005

76445170

David H. Bernstein

Exhibit A (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

vitamin	water
vitamin	water
vitamin	water

Print: Mar 9, 2005

78424474

DESIGN MARK

Serial Number

78424474

Status

NON-FINAL ACTION - MAILED

Word Mark

VITAMINAQUA

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Enerdrinks Noroeste S.L. CORPORATION SPAIN Meixonfrio Rua do Corgo No.
13 Santiago de Compostela 15705 SPAIN

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Mineral
water, soda water, carbonated soft drinks, fruit juices, syrups for
making soft drinks.

Description of Mark

The mark consists of the word VITAMINAQUA with VITAMIN in red and AQUA
in ble and the Q in white inside of a stylized drop of blue water..

Colors Claimed

The color(s) red and blue is/are claimed as a feature of the mark.

Filing Date

2004/05/25

Examining Attorney

MEIER, SHARON

Attorney of Record

Lawrence E. Abelman

Exhibit A (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

VITAMINA**QUA**

Exhibit B (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

EXHIBIT B

Exhibit B (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

To: Fuze Beverage, LLC (docketing@mwzb.com)
Subject: TRADEMARK APPLICATION NO. 78458318 - VITAWATER - FUZE
Sent: 10/9/05 4:36:38 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/458318

APPLICANT: Fuze Beverage, LLC

78458318

CORRESPONDENT ADDRESS:

JEFFREY R. COHEN
MILLEN WHITE ZELANO & BRANIGAN
2200 CLARENDON BLVD STE 1400
ARLINGTON VA 22201-3360

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words
"Box Responses - No Fee."

MARK: VITAWATER

CORRESPONDENT'S REFERENCE/DOCKET NO: FUZE

CORRESPONDENT EMAIL ADDRESS:

docketing@mwzb.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/458318

NOTICE OF SUSPENSION

This responds to applicant's communication dated September 12, 2005. Applicant's amendment to the identification of goods is acceptable and has been entered into the application record.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **78424474 and 76174462**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) **was sent previously**. The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related to the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

Applicant is advised that cited Application Nos. 76445170 and 75734223 have now issued as Registration Nos. 2975087 and 2974987. Potential refusal based on these registration is maintained and continued pending disposition of the above applications. TMEP Sec. 716.02(c).

If the applicant has any questions or needs assistance in connection with this Notice, please e-mail or telephone the assigned examining attorney.

/Steven Perez/

Steven M. Perez

Trademark Attorney

Law Office 101

(571) 272-5888

steven.perez@uspto.gov

Exhibit C (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/424474

APPLICANT: Enerdrinks Noroeste S.L.

78424474

CORRESPONDENT ADDRESS:

Lawrence E. Abelman
ABELMAN FRAYNE & SCHWAB
666 3RD AVE 10TH FL
NEW YORK NY 10017

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: VITAMINAQUA

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 78/424474

This letter responds to the applicant's communication filed on October 11, 2005.

The applicant has 1) submitted a substitute drawing page and 2) amended the color description of the mark. Nos. 1 and 2 are acceptable. However, on August 16, 2005, action on this application was suspended pending the disposition of Application Serial Nos. 75734223, 76445170, and 76174462. The referenced applications have matured into a registration. Therefore, registration is refused as follows:

LIKELIHOOD OF CONFUSION – SECTION 2(d)

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the marks in U.S. Registration No. 2975087, 2974987, and 3009857 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

The applicant's mark is VITAMINAQUA for "Mineral water, soda water, carbonated soft drinks, fruit juices, syrups for making soft drinks." The registrant's marks are VITAMINWATER for "vitamin enhanced flavored drinking water," GLACEAU VITAMINWATER for "Non-alcoholic, flavored drinking water," and GLACEAU VITAMINWATER and design for "Non-alcoholic, flavored drinking water."

When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956).

The goods share the essentially identical dominant marks VITAMINAQUA and VITAMINWATER. The term AQUA and WATER are used interchangeably, and therefore, the marks create the same commercial impression. See attached definitions of AQUA. If the marks of the respective parties are identical or highly similar, the examining attorney must consider the commercial relationship between the goods or services of the respective parties carefully to determine whether there is a likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The goods of the parties are identical and/or highly related, namely, beverages in the nature of water, soft drinks, and fruit juices and syrups for making soft drinks.

The marks are virtually identical. The goods are very highly related. The similarities among the marks and the goods are so great as to create a likelihood of confusion among consumers. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Sharon A. Meier/

Sharon A. Meier

Trademark Attorney, Law Office 112

571-272-9195 phone

571-273-9112 fax

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

Exhibit C (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED
EXAMINING ATTORNEY SPECIFIED ABOVE.**

Print: Dec 3, 2005

75734223

TYPED DRAWING

Serial Number

75734223

Status

REGISTERED

Word Mark

VITAMINWATER

Standard Character Mark

No

Registration Number

2974987

Date Registered

2005/07/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Energy Brands, Inc. CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: VITAMIN
ENHANCED FLAVORED DRINKING WATER. First Use: 1999/03/12. First Use
In Commerce: 1999/03/12.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1999/06/23

Examining Attorney

SLOAN, CYNTHIA

Attorney of Record

DAVID H BERNSTEIN

Print: Dec 3, 2005

76174462

DESIGN MARK

Serial Number

76174462

Status

REGISTERED

Word Mark

GLACEAU VITAMINWATER

Standard Character Mark

No

Registration Number

3009857

Date Registered

2005/11/01

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Energy Brands, Inc. CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S:
Non-alcoholic, flavored drinking water. First Use: 1999/03/12. First
Use In Commerce: 1999/03/12.

Section 2f Statement

as to VITAMINWATER

Filing Date

2000/12/02

Examining Attorney

SLOAN, CYNTHIA

Attorney of Record

David H. Bernstein

Exhibit C (Opposer)
Energy Brands Inc., Opposer, v.
Fuze Beverage LLC, Applicant
Opposition No. _____

GLACEAU VITAMINWATER

Print: Dec 3, 2005

76445170

DESIGN MARK

Serial Number

76445170

Status

REGISTERED

Word Mark

GLACEAU VITAMINWATER

Standard Character Mark

No

Registration Number

2975087

Date Registered

2005/07/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Energy Brands Inc. CORPORATION NEW YORK 17-20 Whitestone Expressway
Whitestone NEW YORK 11357

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S:
Non-alcoholic, flavored drinking water. First Use: 1999/03/12. First
Use In Commerce: 1999/03/12.

Prior Registration(s)

1876824;2265015;2566682;2658236;AND OTHERS

Description of Mark

The mark consists of a bottle label with a band across the top third of the label, and the name GLACEAU VITAMINWATER written vertically three times across the label. The word VITAMINWATER is written in lowercase letters and in alternating emphasized and regular font.

Section 2f Statement

in part, as to VITAMINWATER

Filing Date

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Print: Dec 3, 2005

76445170

2002/08/29

Examining Attorney
SLOAN, CYNTHIA

Attorney of Record
David H. Bernstein

vitamin <small>CLAC FUZE</small> water	vitamin <small>CLAC FUZE</small> water	vitamin <small>CLAC FUZE</small> water

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< Aqtōbe aqua- >

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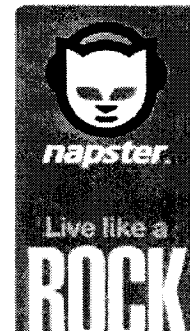
The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

aqua

SYLLABICATION: aq·ua

PRONUNCIATION: āk'wō, ā'kwō

NOUN: /āk'wō, ā'kwō/



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NOUN: Inflected forms: pl. **aquae** (^{ak'wē, a'kwī}) or **aquas**
1. Water. 2. An aqueous solution. 3. A light bluish green to light greenish blue.

ETYMOLOGY: Middle English, from Latin. See akwā in Appendix I.

OTHER FORMS: **aqua** —ADJECTIVE

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aqua-
pref.

Water: *aquacade*.

[From Latin *aqua*, *water*. See **aqua**.]

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aq-ua  **Pronunciation Key** (ăk'wə, ä'kwə)

n. pl. **aq-uae** (ăk'wē, ä'kwī) or **aq-uas**

1. Water.
2. An aqueous solution.
3. A light bluish green to light greenish blue.

[Middle English, from Latin. See **akw-** in Indo-European Roots.]

aq'ua *adj.*

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Main Entry: **aqua**

Pronunciation: 'ak-wə, 'äk-

Function: *noun*

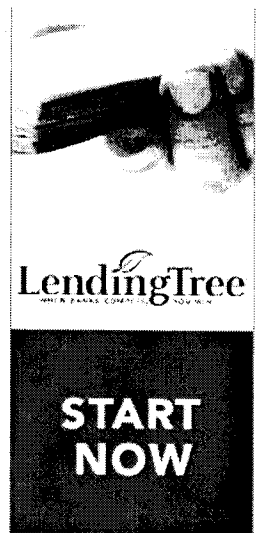
Inflected Form: *plural* **aquae** / 'ak- (")wē, 'äk-"wī/ or **aquas**

: WATER; *especially* : an aqueous solution

Source: Merriam-Webster's Medical Dictionary, © 2002 Merriam-Webster, Inc.

aqua

n. : a shade of blue tinged with green [syn: greenish blue, aquamarine, turquoise, cobalt blue, peacock blue]



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Source: WordNet ® 2.0, © 2003 Princeton University.

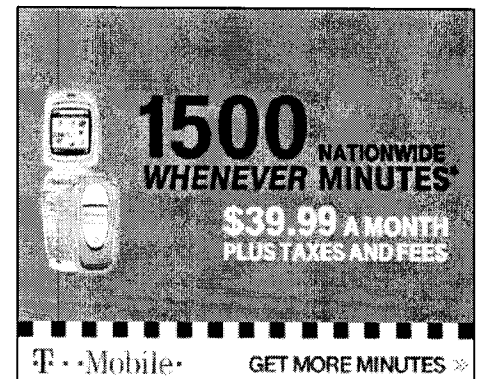
aqua

aqua in CancerWEB's On-line Medical Dictionary

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